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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75832; File No. SR-BATS-2015-69)

September 3, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend Rules 1.5(r), 11.1(a), 11.23, 14.6, 14.11, and 14.12 and Adopt Rule 11.1(a)(1)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 1, 2015, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the definition of Pre-Opening Session under Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time, Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time, and to make related changes to Rules 11.23, 14.6, 14.11, and 14.12. The Exchange also proposes to adopt new Rule 11.1(a)(1) to define Effective Start Time, which would be an order instruction enabling Members<sup>3</sup> [sic] indicate a time upon which their order may become eligible for execution.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the

The text of the proposed rule change is available at the Exchange's website at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of Pre-Opening Session under Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time, Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time, and to make related changes to Rules 11.23, 14.6, 14.11, and 14.12. The Exchange also proposes to adopt new Rule 11.1(a)(1) to define Effective Start Time, which would be an order instruction enabling Members indicate a time upon which their order may become eligible for execution.

Pre-Opening Session 7:00 a.m. Start

The Exchange trading day is currently divided into two sessions: (i) the Pre-Opening Session which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; and (ii) the Regular

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Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.” See Exchange Rule 1.5(n).

Trading Hours which runs from 9:30 a.m. to 4:00 p.m. Eastern Time. The Exchange proposes to amend the definition of “Pre-Opening Session” under Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time.<sup>4</sup>

The Exchange also proposes to amend Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time. Other than the proposal to change the start of the Pre-Opening Session from 8:00 a.m. to 7:00 a.m. Eastern Time discussed above, the Exchange does not propose to amend the substance or operation of Rule 11.1(a).

As amended, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Pre-Opening Session or Regular Trading Hours,<sup>5</sup> depending on the Time-in-Force (“TIF”)<sup>6</sup> selected by the User.<sup>7</sup> Rule 11.1(a) will also be amended to state that the Exchange will not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: BATS Post Only Orders,<sup>8</sup> Partial Post Only at Limit Orders,<sup>9</sup> Intermarket Sweep Orders (“ISOs”),<sup>10</sup> BATS Market

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<sup>4</sup> The Exchange notes that NYSE Arca, Inc. (“NYSE Arca”) operates an Opening Session that starts at 4:00 a.m. Eastern Time (1:00 a.m. Pacific Time) and ends at 9:30 a.m. Eastern Time (6:30 a.m. Pacific Time). See NYSE Arca Rule 7.34(a)(1). The Nasdaq Stock Market LLC (“Nasdaq”) operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See Nasdaq Rule 4701(g). See also Securities Exchange Act Release No. 69151 (March 15, 2013), 78 FR 17464 (March 21, 2013) (SR-Nasdaq-2013-033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pre-Market Hours of the Exchange to 4:00 a.m. EST).

<sup>5</sup> “Regular Trading Hours” is defined as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.” See Exchange Rule 1.5(w).

<sup>6</sup> The Times-In-Force instructions available on the Exchange are set forth under Exchange Rule 11.9(b).

<sup>7</sup> “User” is defined as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” See Exchange Rule 1.5(cc).

<sup>8</sup> See Exchange Rule 11.9(c)(6).

<sup>9</sup> See Exchange Rule 11.9(c)(7).

<sup>10</sup> See Exchange Rule 11.9(d).

Orders<sup>11</sup> with a TIF other than Regular Hours Only,<sup>12</sup> Minimum Quantity Orders<sup>13</sup> that also include a TIF of Regular Hours Only, and all orders with a TIF instruction of Immediate-or-Cancel (“IOC”)<sup>14</sup> or Fill-or-Kill (“FOK”).<sup>15</sup> At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book,<sup>16</sup> routed, cancelled, or executed in accordance with the terms of the order.

*Operations.* From the Members’ operational perspective, the Exchange’s goal is to permit trading for those that choose to trade, without imposing burdens on those that do not. Thus, for example, the Exchange will not require any Member to participate in the extended session, including not requiring registered market makers to make two-sided markets between 7:00 a.m. and 8:00 a.m. The Exchange will minimize Members’ preparation efforts to the greatest extent possible by allowing Members to trade beginning at 7:00 a.m. with the same equipment, connectivity, order types, and data feeds they currently use from 8:00 a.m. onwards.

*Opening Process.* The Exchange will offer no opening process at 7:00 a.m., just as it offers no opening process at 8:00 a.m. today. Instead, at 7:00 a.m., the System will “wake up” by loading in price/time priority all open trading interest entered after 6:00 a.m. Also at 7:00 a.m., the Exchange will open the execution system and accept new eligible orders, just as it currently does at 8:00 a.m. Members will be permitted to enter orders beginning at 6:00 a.m.

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<sup>11</sup> See Exchange Rule 11.9(a)(2).

<sup>12</sup> See Exchange Rule 11.9(b)(7).

<sup>13</sup> See Exchange Rule 11.9(c)(5).

<sup>14</sup> See Exchange Rule 11.9(b)(1).

<sup>15</sup> See Exchange Rule 11.9(b)(6).

<sup>16</sup> See Exchange Rule 1.5(e).

Market Makers will be permitted but not required to open their quotes beginning at 7:00 a.m. in the same manner they open their quotes today beginning at 8:00 a.m.

*Order Types.* Every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m. All other order types, and all order type behaviors, will otherwise remain unchanged. The Exchange will not extend the expiration times of any orders. For example, an order that is currently available from 8:00 a.m. to 4:00 p.m. will be modified to be available from 7:00 a.m. to 4:00 p.m. An order that is available from 8:00 a.m. to 9:30 a.m. will be modified to be available from 7:00 a.m. to 9:30 a.m.

*Routing Services.* The Exchange will route orders to away markets between 7:00 a.m. and 8:00 a.m., just as it does today between 8:00 a.m. and 9:30 a.m. All routing strategies set forth in Exchange Rule 11.11 will remain otherwise unchanged, performing the same instructions they perform between 7:00 a.m. and 8:00 a.m. today.

*Order Processing.* Order processing will operate beginning at 7:00 a.m. just as it does today beginning at 8:00 a.m. There will be no changes to the ranking, display, and execution algorithms processes or rules.

*Data Feeds.* The Exchange will report the best bid and offer on the Exchange to the appropriate network processor, as it currently does beginning 8:00 a.m. The Exchange's proprietary data feeds will be disseminated beginning at 7:00 a.m. using the same formats and delivery mechanisms with which the Exchange currently disseminates them beginning at 8:00 a.m.

*Trade Reporting.* Trades executed between 7:00 a.m. and 8:00 a.m. will be reported to the appropriate network processor with the ".T" modifier, just as they are reported today between at 8:00 a.m. and 9:30 a.m.

*Fees.* The Exchange is not changing any fees in connection with this proposal.

*Market Surveillance.* The Exchange's commitment to high quality regulation at all times will extend to 7:00 a.m. The Exchange will offer all surveillance coverage currently performed by the Exchange's surveillance systems, which will launch by the time trading starts at 7:00 a.m.

*Clearly Erroneous Trade Processing.* The Exchange will process trade breaks beginning at 7:00 a.m. pursuant to Exchange Rule 11.13 just as it does today beginning at 8:00 a.m.

*Related changes to Rules 11.23, 14.6, 14.11, and 14.12.* The Exchange proposes to also make the follow changes to Rules 11.23, 14.6, 14.11, and 14.12 to reflect the extension of the Pre-Opening Session to 7:00 a.m.:

- Rule 11.23, Auctions. The Exchange proposes to amend Rules 11.23(b)(1)(A) and (c)(1)(A) to reflect that Users may submit orders at start of the Pre-Opening Session at 7:00 a.m., rather than 8:00 a.m.
- Rule 14.6, Obligations of Companies Listed on the Exchange. The Exchange proposes to amend Rules 14.6(b)(1), (b)(2), and Interpretation and Policies .01(a), (c), and .02 to require an Exchange-Listed Company that public releases material information outside of the Exchange market hours to inform the Exchange's Surveillance Department of that material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. The Exchange proposes to amend Rule 14.6, Interpretation and Policies .01(b), (c), and .02 to reflect the extension of the Pre-Opening Session to 7:00 a.m. Eastern Time. The amended provisions of Rule 14.6, Interpretation and Policies .01(b), (c), and .02 require companies to notify the Exchange's Surveillance Department of the release of certain material information at least ten minutes prior to the release of such information to the

public when the public release of the information is made during Exchange market hours.

- Rule 14.11, Other Securities. The Exchange proposes to amend Rule 14.11(b)(7) and (c)(7) to reflect the extension of the Pre-Opening Session to 7:00 a.m. Eastern Time.
- Rule 14.12, Failure to Meet Listing Standards. The Exchange proposes to amend Rule 14.12 (e) and (m)(11) to require that companies that publicly announce the receipt of a notification of deficiency, Staff Delisting Determination, Public Reprimand Letter or Adjudicatory Body Decision that serves as a Public Reprimand outside of Exchange market hours inform the Exchange's Surveillance Department of the material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time

#### Effective Start Time

The Exchange propose to adopt a new defined term, Effective Start Time, under proposed paragraph (a)(1) to Rule 11.1. Effective Start Time would be defined as an instruction a User may attach to an order to buy or sell which indicates the time upon which the order is to become eligible for execution. Like orders placed on the BATS Book at the start of the Pre-Opening Session under Rule 11.1(a), at the Effective Start Time, the order will be placed on the BATS Book, routed, cancelled, or executed in accordance with the terms of the order. Once received, orders with an Effective Start Time are placed in a suspended state and not placed on the BATS Book until the Effective Start Time selected by the User. Orders with an Effective Start Time are treated like all other orders once placed on the BATS Book and will receive a time stamp at the time the order becomes eligible for execution. Pursuant to Rule 11.12, orders entered with

identical Effective Start Times will retain their priority as compared to each other based upon the time such orders were initially received by the System.

In general, a User may specify a time between 7:00 a.m. and 4:00 p.m. Eastern Time as the order's Effective Start Time, subject to the trading sessions that the particular order type is eligible for execution. A Member would not be able to combine an Effective Start Time with BATS Post Only Orders, BATS Market Orders, Minimum Quantity Orders, ISOs, or orders that include a TIF of IOC or FOK. The Effective Start Time instruction would be available for all other order types that include a TIF other than IOC or FOK. This is also consistent with current Rule 11.1(a), under which the Exchange does not accept the following orders prior to the start of the Pre-Opening Session: BATS Post Only Orders, Partial Post Only at Limit Orders, ISO, BATS Market Orders with a TIF other than Regular Hours Only, Minimum Quantity Orders that also include a TIF of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### Pre-Opening Session 7:00 a.m. Start

The Exchange believes its proposal to amend Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time, Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time, and the related changes to Rules 11.23,

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<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> 15 U.S.C. 78f(b)(5).



14.6, 14.11, and 14.12 promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that opening its system at 7:00 a.m. will benefit investors, the national market system, Members and the Exchange market. Opening at 7:00 a.m. will benefit investors and the national market system by increasing competition for order flow and executions, and thereby spurring product enhancements and lowering prices. Opening at 7:00 a.m. will benefit Members and the Exchange market by increasing trading opportunities between 7:00 a.m. and 8:00 a.m. without increasing ancillary trading costs (telecommunications, data, connectivity, etc.) and, thereby, decreasing average trading costs per share. Opening the Exchange at 7:00 a.m. will also benefit Members that choose not to participate in the early hours but nonetheless gain the opportunity to interact with liquidity entered by other members during the early session.

The proposed rule change promotes just and equitable principles of trade by offering additional trading opportunities to Members that desire them, without imposing burdens on Members that do not. The proposal will facilitate a well-regulated, orderly, and efficient market during a period of time that is currently underserved. The Exchange notes that the proposed trading period has been available on NYSE Arca and Nasdaq.<sup>19</sup> The Exchange believes that the availability of trading between 7:00 a.m. and 8:00 a.m. has been beneficial to market participants including investors and issuers on other markets. The Exchange believes that offering a competing trading session will further benefit investors by promoting competition and order interaction, while imposing no added costs on investors or other market participants that choose not avail themselves of these benefits.

#### Effective Start Time

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<sup>19</sup> See supra note 4.

The Exchange believes its proposed Effective Start Time instruction also promotes just and equitable principles of trade, and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange believes that the proposed Effective Start Time instruction will provide Users with greater control over their orders by electing a specific time upon which their order may become eligible for execution. The concept of selecting conditions during which an order is [sic] to be eligible for execution is not novel. The operation of the Effective Start Time instruction is similar to functionality available on the Exchange and elsewhere that permits members to elect when their orders are to become eligible for executions. Specifically, on the Exchange, a User may elect a buy (sell) Stop Order or Stop Limit Order indicating that the order become eligible for execution when the consolidated last sale (purchase) in a security occurs at or above (below) a specified Stop Price.<sup>20</sup> In addition, a User may elect the trading session(s) during which their order would be eligible for execution. In such case, the User may enter an order during the Pre-Opening Session and select that such order not be eligible for execution until 9:30 a.m., the start of Regular Trading Hours. Conversely, Members also maintain the ability to elect when their order should expire or be cancelled. For example, a User may elect a TIF instruction of Day, GTD, or GTX, all which state that the order cancelled if not executed by a certain time.<sup>21</sup> Lastly, similar functionality is currently available on NYSE Arca.<sup>22</sup>

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<sup>20</sup> See Exchange Rules 11.9(c)(17) and (c)(18). See also New York Stock Exchange, Inc. (“NYSE”) Rule 13(e)(7).

<sup>21</sup> See Exchange Rules 11.9(b)(2),(4), and (5). See also Nasdaq Rule 4703(a), and NYSE Rule 13(b).

<sup>22</sup> NYSE Arca permits the selection of an Effective Time (Tag 168), like the Exchange proposes herein, and Expire Time (Tag 126). See NYSE Arca FIX Specifications, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse/FIX\\_Specification\\_and\\_API.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/FIX_Specification_and_API.pdf) (dated June 8, 2015).

The Exchange believes it has appropriately limited the availability of the Effective Start Time instruction to exclude its use with order types and order instructions that it may be deemed inconsistent with. Specifically, the Effective Time instruction is not available for ISOs and the use of such an instruction may be considered inconsistent with a Member's responsibility to comply with the requirements of Regulation NMS relating to ISOs. In addition, the Effective Start Time instruction is not available for BATS Market Orders or orders with a TIF instruction of IOC or FOK as well as orders with BATS Post Only Order or Minimum Quantity Orders. BATS Market Orders and orders with a TIF instruction of IOC and FOK are immediately executable once placed on the BATS Book. Permitting the use of an Effective Start time with such orders appears inconsistent as a User will not know at the time of order entry what the market for such a security would be at the selected Effective Start Time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal to start the Pre-Opening Session at 7:00 a.m. Eastern Time would enhance competition by enabling the Exchange to directly compete with NYSE Arca and Nasdaq for order flow and executions starting at 7:00 a.m., rather than 8:00 a.m. In addition, the proposed Effective Start Time instruction will enable the Exchange to provide similar functionality as NYSE Arca. The fact that the extending the Pre-Opening Session and Effective Start Time are themselves a response to the competition provided by other markets is evidence of its pro-competitive nature.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed

rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2015-69 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2015-69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2015-69, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Robert W. Errett  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).